HUMAN RIGHTS AND THE FAMILY

The United Nations is spearheading the observance of 1994 as the International Year of the Family. One of the principles of the Year is: families assume diverse forms and functions from one country to another, and within each national society.

While individuals and families struggle to retain their proud traditions and heritage, for many people the most pronounced feature of their lives is change. Worldwide the family has been undergoing constant transformation, due to social changes, economic problems and the pressures of modernization and development.

Reference to the family in many international legal instruments reflects the continuing concern and respect of United Nations Member States for this social structure. As these instruments evolved, they struck a balance between promoting human rights and respecting existing traditions, as well as protecting the family as an institution while safeguarding the individual rights of its members.

A number of international instruments refer to the family, including: the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) and the Convention on the Rights of the Child (1989), as well as a host of others. This article reviews some of the basic provisions concerning the family found in major international legal instruments.

FUNCTIONS OF THE FAMILY

The family has been recognized in international legislation since 1948, when the Universal Declaration of Human Rights was adopted by the United Nations General Assembly. According to the Declaration, "the family is the natural and fundamental group unit of society" (article 16-3), and "men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family" (article 16-1).

The family has been described according to its function in society, for example, the functioning of the family as an economic unit. The Universal Declaration of Human Rights states that "everyone has the right to a standard of living adequate for the health and well-being of himself [herself] and of his [her] family, including food, clothing, housing and medical care and necessary social services" (article 25-1). Where this right cannot be assured because of "unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his [her] control", the right to social security should be assured (article 25-1).

Moreover, even when a person is stateless or a refugee, his/her right to social security related to family responsibilities has to be guaranteed (Convention relating to the Status of Refugees, article 24-1 (b); Convention relating to the Status of Stateless Persons, article 24-1).

Reproduction and the upbringing of children have been viewed as another important function of the family. One of the basic rights of the parents is to decide how many children to have and when to have them. The Proclamation of Teheran, adopted at the International Conference on Human Rights held at Teheran in 1968, states that "parents have a basic human right to determine freely and responsibly the number and the spacing of their children" (paragraph 16).

FAMILY AND THE CHILD

International instruments also focus on the child, who, "for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding" (Convention on the Rights of the Child, preambular paragraph 6). In addition,

"every child shall have... the right to such measures of protection as are required by his [her] status as a minor, on the part of his [her] family, society and the State" (International Covenant on Civil and Political Rights, article 24-1).

To help the family in assuming this role in the child's growth, the International Covenant on Economic, Social and Cultural Rights states that "the widest possible protection and assistance should be accorded to the family, ... particularly for its establishment and while it is responsible for the care and education of dependent children" (article 10-1). For the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, "Child welfare depends upon good family welfare" (article 2).

When the child cannot get this support from his or her family, "society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support", says the Declaration of the Rights of the Child (principle 6). When the child is considered a refugee, States shall cooperate with competent organizations "to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family" (Convention on the Rights of the Child, article 22-2).

FAMILY AND EDUCATION

International instruments stress the role the family plays in education, including the transmission of traditional culture and religion. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states that "the parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up" (article 5-1).

The family is also expected to educate the child with a broad perspective. The Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples states that "a major aim in educating the young shall be to develop all their faculties and to train them to acquire higher moral qualities, to be deeply attached to the noble ideals of peace, liberty, the dignity and equality of all men [and women], and imbued with respect and love for humanity and its creative achievements. To this end the family has an important role to play" (principle VI, paragraph 1).

The family role with children is not limited to providing welfare and education. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as "The Beijing Rules", mention the family as one of the possible resources "for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law" (1.3). If an offence has occurred, diversion or non-intervention is considered to be the preferred response "where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner" (11, Commentary). The Rules also require "the separation of children from their parents" only as "a measure of last resort" (18, Commentary). In any case, the rehabilitation of the juvenile within the family unit is considered to be most desirable (25.1).

PROTECTION OF THE FAMILY AS AN INSTITUTION

On the basis of these functions, the family has been considered as an object of protection as well as an institution which should be free from all kinds of outside intervention and discrimination. The Universal Declaration of Human Rights states that "no one shall be subjected to arbitrary interference with his [her] privacy, family, home or correspondence" (article 12). Also, "everyone has the right to the protection of the law against such interference or attacks" (ibid.).

However, more recent legislation has recognized that some forms of traditional families may not necessarily ensure fundamental human rights for all their members. In principle, the Universal Declaration of Human Rights states that men and women of full age "are entitled to equal rights as to marriage, during marriage and at its dissolution" (article 16-1). But the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, of 1962, acknowledges that "certain customs, ancient laws and practices relating to marriage and the family were inconsistent with the principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights" (preambular paragraph 3).

WOMEN AND THE FAMILY

Moreover, the 1979 Convention on the Elimination of All Forms of Discrimination against Women had to repeat that discrimination against women "hampers the growth of the prosperity of society and the family" (preambular paragraph 7). The same Convention also refers to "the great contribution of women to the welfare of the family", and articulates that "the upbringing of children requires a sharing of responsibility between men and women and society as a whole" (preambular paragraph 13). It further states that "a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women" (paragraph 14). The family as an institution is therefore required to keep a balance among the individual rights of its members.

Family responsibilities should not cause discrimination outside the family, says the ILO Convention No. 111, concerning Discrimination in Respect of Employment and Occupation, of the International Labour Organisation (ILO). That Convention, of 1958, states that "other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognized to require special protection or assistance, shall not be deemed to be discrimination" (article 5-2).

THE INDIVIDUAL AND THE FAMILY

The close relationship between an individual and his/her family sometimes needs special consideration. In criminal justice, "the term 'victim'... includes, where appropriate, the immediate family or dependants of the direct victim", according to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (paragraph 2). On the other hand, "a person may be considered a victim... regardless of the familial relationship between the perpetrator and the victim" (ibid.).

In recognizing the family as a fundamental human right, the Standard Minimum Rules for the Treatment of Prisoners state that prisoners have the right to correspondence with their families, to receive visits of their families, and to inform their families of their imprisonment or transfer (paragraphs 37 and 44).

BASIC HUMAN RIGHTS AND THE FAMILY

In international legislation, the family has been mentioned in many different contexts. This shows that the concept of the family—its role and functions—has been changing over the years. However, the focus on the family, its welfare, and its functioning with sufficient support from family members, society and the State remain an important part of achieving basic human rights. These rights are accorded to every individual, regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In the culturally and economically diverse world of today, the realization of these rights requires an international cooperation based on the free consent of people and understanding of the relationship between human rights and the family.

REFERENCES TO THE FAMILY IN INTERNATIONAL LEGAL INSTRUMENTS

Some key sections dealing with the family can be found in the following declarations and conventions, adopted by the international community since 1948:

Universal Declaration of Human Rights, 1948, articles 12, 16(1), 16(3), and 25(1).

Convention Relating to the Status of Refugees, 1951, article 24(1b).

Convention Relating to the Status of Stateless Persons, 1954, article 24(1).

Standard Minimum Rules for the Treatment of Prisoners, 1955, paragraphs 37 and 44.

Declaration of the Rights of the Child, 1959, principle 6.

Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples, 1965, principle VI, paragraph 1.

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1965, preambular paragraph 3.

International Covenant on Civil and Political Rights, 1966, articles 23(1) and 24(1).

International Covenant on Economic, Social and Cultural Rights, 1966, article 10(1).

Proclamation of Teheran, adopted at the International Conference on Human Rights in Teheran, 1968, paragraph 16.

Convention on the Elimination of All Forms of Discrimination against Women, 1979, preambular paragraphs 7, 13 and 14; article 16, paragraph 1(e).

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981, article 5(1).

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), 1985, principles 1(1) and 1(3).

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, paragraphs 2, 3, 6(d), 8 and 12(b).

Declaration of Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, 1986, article 2.

Convention on the Rights of the Child, 1989, preambular paragraph 6 and article 22(2).

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